

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2908 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

RASIKLAL MATHURBHAI GURJAR

Versus

STATE OF GUJARAT

Appearance:

MR BB OZA for Petitioner
Mr. M.R.Rawal, instructed by M/S MG DOSHIT & CO.
for respondent no. 1.
SERVED for Respondent No. 3, 4

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 07/02/97

ORAL JUDGEMENT

This petition under Article 226 of the Constitution challenges the order of termination of the petitioner who was a work charged clerk in Narmada Project colony circle which is a part of Narmada and

Water Resources Department (previously known as Irrigation Department) in the State.

2. It has been averred in the petition that the petitioner was appointed as a workcharged clerk under the respondent on June 21, 1978. The petitioner was transferred during the course of service and had complied with the transfer orders. However, the petitioner was served with an order dated March 15, 1985 declaring him to be surplus and relieving him from service from April 1, 1985.

3. On behalf of the petitioner, learned advocate Mr. Oza has submitted that there were several juniors to the petitioner who were continued as work-charged clerks. The names of about 11 such junior employees are given in para 7 of the petition. They were working as work-charged clerks in the same sub-division where the petitioner was employed. It is, therefore, submitted that termination of the petitioner's service was arbitrary and in violation of his fundamental rights under Articles 14 and 16 of the Constitution.

4. The respondents were earlier heard when the petition was admitted and they were also heard for interim relief. In fact, the learned counsel for the respondents had then stated that the petitioner was posted at a particular place in Kevadia colony, as per order no. 423 dated April 1, 1985 but the petitioner had failed to report for duty. The petitioner's contention at that time was that he was not given any orders for his transfer and that he was not allowed to work. By the order dated June 3, 1985 this court had, therefore, directed the respondents to permit the petitioner to work at the place specified in the above order.

5. When the petition came up for hearing earlier on January 30, 1997, Mr. M.R. Rawal, learned A.G.P. had taken adjournment for taking instructions from the respondents, since no affidavit in reply was filed till this date. Today also, the matter is called out, but no affidavit in reply is filed. There is, therefore, no reason to disbelieve the petitioner who has stated on oath that persons junior to him have been continued in service. In fact, the respondents themselves had stated before this Court in 1985 that the petitioner was continued in service by virtue of the order dated April 1, 1985.

6. It is also required to be noted that after filing of the petition, the State Government has

passed a Government Resolution dated October 17,1988 on the basis of recommendations of the Dolatbhai Parmar Committee which was appointed to go into the question of benefits to be given to daily wager employees. The committee had made recommendations in favour of daily wager employees depending upon length of service that they had put in. The category of work-charged employees has been treated on higher footing than daily wager employees. The petitioner was a work-charged clerk who was recruited in June 1978. Thus, by now the petitioner has completed almost 19 years of service. The persons junior to the petitioner have been continued in service. Under the circumstances, the impugned order dated March 8,1985 declaring the petitioner as surplus is quashed and set aside. On behalf of the petitioner, it is stated that the petitioner will continue to render his service at whichever place the petitioner is posted.

7. In view of the above discussion, the petition is allowed. The order dated March 8,1985 declaring the petitioner as surplus is quashed and set aside. Rule is made absolute to the aforesaid extent. In the facts and circumstances of the case, there shall be no order as to costs.

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